

THE LEGAL BEAT

LEGISLATIVE ISSUE

VOLUME 2

New and Amended Statutes Fall 2017

There are numerous changes to the statutes which address gangs. These changes are effective December 1, 2017.

The current Article is entitled North Carolina **Street** Gang Suppression Act. The Article has been amended and is will be captioned as the North Carolina **Criminal** Gang Suppression Act. N. C. Gen. Stat. 14-50.15.

N. C. Gen. Stat. 14-50.16 which described and defined Street Gang Activity has been repealed. It has been replaced by a new statute- N. C. Gen. 14-50.16A entitled “Criminal Gang Activity”. The significant change is reflected in the this statute as the statutes now provide specific definitions for Criminal Gang, Gang Activity, Gang Leader and Gang Member.

N. C. Gen. 14-50.16A contains the follow definitions:

(1) Criminal Gang. - Any ongoing organization, association, or group of three or more persons, whether formal or informal, that:

(i) has as one of its primary activities the commission of criminal or delinquent acts and

(ii) shares a common name, identification, signs, symbols, tattoos, graffiti, attire, or other distinguishing characteristics, including common activities, customs, or behaviors.

The term shall not include three or more persons associated in fact, whether formal or informal, who are not engaged in criminal gang activity.

(2) Criminal gang activity. – The commission of, attempted commission of, or solicitation, coercion, or intimidation of another person to commit

(i) any offense under Article 5 of Chapter 90 of the General Statutes (N. C. Controlled Substance Act) or

(ii) most offenses under Chapter 14 of the General Statutes and either of the following conditions is met:

a. The offense is committed with the intent to benefit, promote, or further the interests of a criminal gang or for the purposes of increasing a person's own standing or position within a criminal gang.

b. The participants in the offense are identified as criminal gang members acting individually or collectively to further any criminal purpose of a criminal gang.

(3) Criminal gang leader or organizer. – Any criminal gang member who acts in any position of management with regard to the criminal gang and who meets **two or more** of the following criteria:

- a. Exercises decision-making authority over matters regarding a criminal gang.
- b. Participates in the direction, planning, organizing, or commission of criminal gang activity.
- c. Recruits other gang members.
- d. Receives a larger portion of the proceeds of criminal gang activity.
- e. Exercises control and authority over other criminal gang members.

(4) Criminal gang member. – Any person who meets **three or more** of the following criteria:

- a. The person admits to being a member of a criminal gang.
- b. The person is identified as a criminal gang member by a reliable source, including a parent or a guardian.
- c. The person has been previously involved in criminal gang activity.
- d. The person has adopted symbols, hand signs, or graffiti associated with a criminal gang.
- e. The person has adopted the display of colors or the style of dress associated with a criminal gang.
- f. The person is in possession of or linked to a criminal gang by physical evidence, including photographs, ledgers, rosters, written or electronic communications, or membership documents.
- g. The person has tattoos or markings associated with a criminal gang.
- h. The person has adopted language or terminology associated with a criminal gang.
- i. The person appears in any form of social media to promote a criminal gang.

Other statutes with significant changes:

N. C. Gen. Stat. 14-50.19 Intimidation (instead of Threats) to deter from gang withdrawal

(a) It is unlawful for any person to communicate a threat of injury to a person, or to damage the property of another, with the intent to deter a person from assisting another to withdraw from membership in a criminal gang.
(a violation of this statute will be a Class G felony.)

This statute was amended to add a new provision:

(b) It is unlawful for any person to injure a person with the intent to deter a person from assisting another to withdraw from membership in a criminal gang.
(a violation of this statute is a Class F Felony)

N. C. Gen. Stat. 14-50.20 Punishment (Instead of Threats of punishment) or retaliation for gang withdrawal

(a) It is unlawful for any person to communicate a threat of injury to a person, or to damage the property of another, as punishment or retaliation against a person for having withdrawn from a criminal gang.
(a violation of this statute is now a Class G felony)

This statute was amended to add a new provision:

(b) It is unlawful for any person to injure a person as punishment or retaliation against a person for having withdrawn from a criminal gang.
(a violation of this statute is a Class F felony)

REMEMBER: N. C. Gen. Stat. 14-50.21 provides that any offense committed in violation of N.C. Gen. Stat. 14-50.16 through 14-50.20 is considered a separate offense.

MODIFICATIONS IN SENTENCING WITH CRIMINAL GANG INVOLVEMENT

N. C. Gen. Stat. 15A-1340.16E Enhanced sentence for offenses committed by criminal gang members as a part of criminal gang activity

This is a new statute under Article 81B of Chapter 15A Felony Structured Sentencing. In summary it provides:

(a) If a person is convicted of any felony other than a Class A, B1, or B2 felony, and it is found that the offense was committed as part of criminal gang activity, the person shall be sentenced at felony class level one class higher than the principal felony for which the person is convicted.

(b) If a person is convicted of any felony other than a Class A, B1, or B2 felony and the person is found to be a criminal gang leader or organizer, the person shall be sentenced at a felony class level two classes higher than the principal felony.

Note: The indictment must allege the facts that would qualify the offense for the enhancement and the State must prove the elements beyond a reasonable doubt. This section would not apply to any gang offense.

An aggravating factor was rewritten to address the changes from criminal street gang to criminal gang and removed a former definition:

N.C. Gen. Stat. 15A-1340.16 (d)(2)(a): It is an aggravating factor if the offense was committed for the benefit of , or at the direction of, any criminal gang as defined by G. S. 14-50.16A(1), with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.

MODIFICATIONS TO STATUTES ADDRESSING CRIMINAL GANG ACTIVITY AS A PUBLIC NUISANCE:

N. C. Gen. Stat. § 14-50.42. Real property used by criminal street gangs declared a public nuisance: abatement.

(a) Public Nuisance. – Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal street gang activity, as defined G.S. 14-50.16A(2), shall constitute a public nuisance and may be abated as provided by and subject to the provisions of Article 1 of Chapter 19 of the General Statutes.

The following paragraph has been added to this statute:

Proof that criminal gang activity by a criminal gang member is regularly committed at any real property or proof that the real property is regularly used for engaging in criminal gang activity by a criminal gang member is prima facie evidence that the owner or person who has legal possession of the real property knowingly permitted the act unless the owner or person who has legal possession of the real property is making or has made a good-faith attempt to terminate the criminal gang activity or remove criminal gang members from the property through legal means, including trespass or summary ejection. For purposes of this section, the term "regularly" means at least five times in a period of not more than 12 months.

Subsection (b) was amended with the significant amendments underlined:

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal gang activity where any of the following conditions are met:

- (1) The owner or person who has legal possession of the real property does not have actual knowledge that the real property is being used for criminal gang activity.
- (2) The owner or person who has legal possession of the real property is being coerced into allowing the property to be used for criminal gang activity.
- (3) The owner or person who has legal possession of the real property is making or has made a good-faith attempt to terminate the criminal gang activity or remove criminal gang members from the property through legal means, including trespass or summary ejection.

For the purposes of this subsection, evidence that the defendant knew, or by the exercise of due diligence should have known, of the criminal gang activity constitutes proof of actual knowledge.

OTHER AMENDED STATUTES

A number of statutes were amended to reflect the change from criminal street gang to criminal gang and to reflect the new statute number:

- N.C. Gen. Stat. 14-34.9 Discharging a firearm from within an enclosure
- N. C. Gen. Stat. 14-50.17 Soliciting; encouraging participation
- N.C. Gen. Stat. 14-50.18 Soliciting; encouraging participation; minor
- N. C. Gen. Stat. 14-50.22 Enhanced offense for misdemeanor criminal gang activity
- N. C. Gen. Stat. 14-50.25 Reports of disposition; criminal gang activity
- N.C. Gen. Stat. 14-50.43 Criminal Gangs declared a public nuisance
- N. C. Gen. Stat. 15A-533(e) Right to pretrial release in capital and noncapital cases
- N. C. Gen. Stat. 15A-1343(b1) Conditions of Probation